IN THE SUPREME COURT OF THE STATE OF DELAWARE

STEPHEN SELBY,	§	
	§	No. 10, 2011
Defendant Below,	§	
Appellant,	§	Court Below–Superior Court
	§	of the State of Delaware in
v.	§	and for New Castle County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID No. 1003010210
Appellee.	§	

Submitted: May 25, 2011
Decided: August 10, 2011

Before **HOLLAND, BERGER and JACOBS,** Justices.

O R D E R

This 10th day of August 2011, upon consideration of the appellant's brief filed pursuant to Supreme Court Rule 26(c), his attorney's motion to withdraw, and the State's response, it appears to the Court that:

(1) In April 2010, the appellant, Stephen Selby, was indicted on charges of Assault in the Second Degree, Terroristic Threatening, Noncompliance with Conditions of Bond, Kidnapping in the First Degree and Reckless Endangering in the First Degree. On September 21, 2010, Selby agreed to plead *nolo contendere* to Kidnapping in the First Degree. In exchange, the State agreed to drop the other charges and to not seek habitual

offender sentencing. Thereafter, the Superior Court referred the matter for a presentence investigation.

(2) On December 17, 2010, the Superior Court sentenced Selby to twenty years at Level V suspended after eight years for three years at Level III suspended after one year for two years at Level II. Immediately after he was sentenced, Selby made a verbal request to withdraw his plea, which the Superior Court denied. This appeal followed.

(3) Selby's appellate counsel ("Counsel")[1] has filed a brief and a motion to withdraw pursuant to Supreme Court Rule 26(c) ("Rule 26(c)").[2] Counsel asserts that, based upon a complete and careful examination of the record, there are no arguably appealable issues. Selby, through Counsel, has submitted two issues for the Court's consideration. The State has responded to Selby's issues and has moved to affirm the Superior Court's judgment.

(4) When reviewing a motion to withdraw and an accompanying brief under Rule 26(c), this Court must be satisfied that defense counsel has made a conscientious examination of the record and the law for arguable claims.[3] The Court must also conduct its own review of the record and

[1] Selby was represented by different counsel at trial.
[2] *See* Del. Supr. Ct. R. 26(c) (governing criminal appeals without merit).
[3] *Penson v. Ohio*, 488 U.S. 75, 83 (1988); *McCoy v. Court of Appeals of Wisconsin*, 486 U.S. 429, 442 (1988); *Anders v. California*, 386 U.S. 738, 744 (1967).

determine whether the appeal is so totally devoid of at least arguably appealable issues that it can be decided without an adversary presentation.[4]

(5) In his first issue on appeal, Selby claims that the State violated its agreement "not to recommend a sentence." Selby's claim is not supported by the record. There is nothing in Selby's written plea agreement or the transcript of the plea proceeding prohibiting the State from making a sentencing recommendation.

(6) In his second issue on appeal, Selby claims that the Superior Court relied on "factual inaccuracies," namely allegations of domestic violence for which he was not convicted, when imposing sentence. Selby's claim is not supported by the record and is otherwise without merit. When deciding an appropriate sentence, the Superior Court may consider a wide range of factors and is not limited to prior criminal convictions.[5] To the extent the Superior Court considered unproven allegations of domestic violence when imposing sentence, Selby's claim of error is without merit in the absence of any evidence that the court relied on "demonstrably false information or information lacking a minimum indicium of reliability."[6]

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[4] *Id.*
[5] *Mayes v. State*, 604 A.2d 839, 842-43 (Del. 1992).
[6] *Id.* at 843.

(7) Delaware law is well-established that "`[a]ppellate review of a sentence generally ends upon determination that the sentence is within the statutory limits prescribed by the legislature.'"[7] The statutory range for Kidnapping in the First Degree is two to twenty-five years.[8] The sentence imposed in Selby's case – twenty years at Level V suspended after eight years for probation – was within the statutory limits.

(8) The Court has reviewed the record carefully and has concluded that Selby's appeal is wholly without merit and devoid of any arguably appealable issue. We are satisfied that Counsel made a conscientious effort to examine the record and the law and properly determined that Selby could not raise a meritorious claim on appeal.

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED. The motion to withdraw is moot.

BY THE COURT:

/s/ Carolyn Berger
Justice

[7] *Id.* at 842 (quoting *Ward v. State*, 567 A.2d 1296, 1297 (Del. 1989).
[8] *See* Del. Code Ann., tit. 11 § 783A (defining Kidnapping in the First Degree, a class B felony) (2007 & Supp. 2010). *See* Del. Code Ann., tit. 11 § 4205(b)(2) (2007) (providing that statutory sentencing range for class B felony is two to twenty-five years).